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"On Earth peace, good will towards men."

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Editorial Notice.

The present number would have completed the 2nd. volume had I not determined to add a supplement of half a sheet at least. The patronage of the Moral Advocate is now larger than it has ever been, at any former period, and the contributions furnished by correspondents are more copious and interesting. These are both favourable indications. However conscious I may be of my lack of abilities to do justice to the cause I have endeavoured to support, and which is increasingly dear to me, it is still a source of encouragement to find that my feeble efforts have obtained the approbation of some of the sincere advocates for peace. I have reason to believe that the subject is gaining more serious reflection among the political class of society. As those who hold the principle become aroused into a wisely directed activity, to promote the diffusion of that light which has been communicated to them—and as men of talents and political influence become impressed with the principle, and not ashamed to avow it, the ardent wishes of my heart, will approach their consummation.

I shall, at the beginning of next month, enter upon the third volume.

As the great object is the diffusion of the principle of Peace, of Harmony and Happiness, the editor takes the liberty to recommend to his subscribers, to circulate their numbers among such of their neighbours and acquaintance, as do not hold the same sentiments with themselves, and, of course, are not disposed to

subscribe for the work. It is much more important to convince those who are not already convinced, of the unlawfulness of war, than to add more conviction to those who are already sufficiently convinced on this subject. It is this change of sentiment in the former class, that we look to, as the immediate object of all our labours—and if but one single individual is thus convinced of the incompatibility of war, with the Gospel Dispensation, it is an important acquisition to the cause of humanity.

Prospects in Europe.

The present State of Europe has excited a deep interest in this country; nor indeed can either the christian or statesmen regard with indifference the events which have taken place, or are anticipated. We see men who are invested with power, combining to crush the liberty of nations, & we see millions of soldiers ready to point their bayonets in any direction, at the mere will of their rulers. These things present the human character in a very mortifying point of view: and it seems strange that men, possessing the faculties they do,—the capacity to comprehend physical and moral subjects—should sink down in such a state of degradation and depravity.

In the sovereigns of Europe we see the effects of the possession of Power. We see too it is *their* views—it is *their* feelings of ambition, or perhaps as they would say—their ideas of expediency and right, that is to produce war—the mass of mankind can have no interest in it: except the wages they receive, and the plunder they may obtain. But the ostensible object that is

thing in it which can benefit the subjects of France, Russia, or other members of the confederacy. It is true they use terms, by which to cover the real design. They talk of order, harmony and happiness—and perhaps the soldiers believe it; for the terms are not more improperly applied than they have been in other cases—Yet we think it strange that the real object should be concealed from the most superficial observer and so many of us would say of all wars.

But rulers have the power to make war, & generally to preserve peace: nor is this confined to monarchal governments. The bulk of mankind look up to them, as best acquainted with the relations with other powers, and the best judges of the policy to be pursued. If the war policy is to be pursued, measures are adopted to influence the minds of those who are to be called on as the instruments of death: and much, very much is done by the abuse of terms. Honor, Rights, Order, Liberty and Happiness, are applied not to subjects or measures with which they are connected, but just to suit the purposes of the designing few, who are endeavoring to accomplish their partial purposes, at the expense of the rest of mankind—Nor should it be forgotten, that these designing rulers hazard the lives, the liberties, the virtue & happiness of their own subjects, no less than of their enemies. As to the general results, they stand in about the same relation to both parties: and in this view may fairly be considered the enemies of both.—Who will question this, as applied to the allied sovereigns? Who will say that Louis, or Alexander, or any others of the unholy league regard the lives, liberty or happiness of their own subjects any more than they do the happiness of Spain? And the same character, in various shades of difference, runs thro' the whole war system. Whoever decides on a war, does it at the certain sacrifice of those he calls his friends. He place them in the same situation with those he considers his enemies; &

exposes them to all the calamities of the opposite party, on whom he wishes to draw down the whole weight of vengeance. And generally, very generally, indeed, it is to subserve his own selfish purposes. And what is still more astonishing is, that the cheat, even with the flimsiest covering, is concealed from those very persons who are the instruments of his purposes, & the sacrifices of his passions!! And why is this blindness so great, and so common? Why does every scheme of violence, however shocking in its oration or base in its secret motives, find ready instruments? Without going into those reasons which are identified with the moral condition of mankind, I will mention one that has an extensive influence. It is the point on which military power and subordination turns. It is the principle so emphatically laid down, that the soldier must not think for himself! Is it not a maxim in military law that a soldier *must* obey his orders? that he has nothing to do with principles or policy from which they emanated? This doctrine, if admitted at all, will apply to all cases. The Turk, the Russian, the Frenchman, and the citizen of the United States are alike bound by it, or it is alike preposterous to all. But mankind have been taught to admit it as truth. They do so without examination; and we see the result in the present condition of the world.

It is time that men should begin to *think* for themselves. It is time they should be sensible of the responsibility and dignity of the human character—that they are accountable to God, and may rise to the condition of *His children*. It never was designed that we should become the slaves of *grand* or *petty* despots. Men like ourselves may lose every ennobling principle, and become the slaves of base and “odious passions.”* And how degrading a condition it must be, for others to become the passive, unthinking instruments of

*Bonaparte's Letter to the Arch Duke Charles.

an individual thus actuated! And such is unquestionably the case with some rulers and subjects in the present day. The horse may carry the libertine to his objects of pleasure or diversion, but men, with as little exercise of moral reflection, must carry him through seas of blood, to the objects of his ambition. The horse, for his services, receives the full measure of enjoyment, according to his nature—but men must give up their enjoyments, their liberty, their lives, and in their disregard of the laws of God, their hopes of happiness in heaven!

If a ruler indulges the same passions, pursues the the same objects—it is immaterial, as to the most important point, whether he holds his power by hereditary descent, or by the suffrages of misguided men.

In those important concerns which involve every thing which is interesting to us as animal or rational beings—every thing which concerns our happiness in the present or a future state of being, we certainly ought to *think* for ourselves, if we are to think at all. If subjects of this description are not to require the exercise of reason and revelation—of judgment and conscience—then the faculty of reflection and the susceptibility of religious feeling were given us in vain. ED.

REPORT

On the Penitentiary System.

Continued from page, 170.

We have spoken at large on the destructive effects of the too frequent exercise of the pardoning power. We spoke with freedom, but without allusion to persons or Chief Magistrates. We intended that our strictures should be abstract and general in their application. In bringing up the subject again, to suggest the remedy, our task is easy and simple. Let no convict be pardoned. Let the display of executive clemency be so rare and seldom, that it will amount to a virtual denial of all applications for its interposition

and a destruction to the hopes and expectations of all convicts. We must come to this, or find all attempts to perfect the Penitentiary System, fruitless, and worse than fruitless. But what is to be done? Two things are to be done, if we mean to correct the evils that we arraign. In the first place, persons of respectability, influence and moral worth, must abstain from passing off shameful impositions upon our Chief Magistrates, although done with the best intentions, and the purest motives. The practice of signing petitions for pardons, is one of the most pernicious and dangerous kind. It palsies our penal laws, embarrasses the chief magistrate, and, in effect, promotes the increase of crime and guilt. It creates unjust discriminations, and in many instances, violates the moral obligations of citizens, if we are bound by moral obligations, to do that which will promote the prosperity and happiness of the commonwealth, and to refrain from all acts that produce their diminution. To see the most distinguished and benevolent members of the community, heedlessly putting down their names to an application for the pardon of a convict, who has forfeited every claim to any sympathy or humanity, but what the stern mandates of justice permit us to cherish with propriety, presents a most melancholy comment on the weakness of human nature, and a total want of all forecast and prudence. The Chairman of this committee has seen lists of names, for which the utmost respect is ever cherished, at the bottom of applications, for the most notorious villains that ever faced a court of justice. Gamblers, and the keepers of gambling houses, where the sons of our first citizens and the inmates of our most respectable families, have been seduced, fleeced and ruined—counterfeits, swindlers, murderers pirates—hostes humani generis, who roam and plunder over the seas, can strike the chord of sympathy and send forth appeals that reach the bosoms and command the interposition of per-

sons, who should shrink, with the feelings of abhorrence, from the touch of their petitions. We call the attention of the American people to the very able letter of Mr. Raymond, contained in the appendix of this report, in which a striking instance will be found to corroborate the correctness of these strictures. A murder was perpetrated of the most cold blooded, wanton and shocking character, on a helpless and unoffending man, who appealed to his destroyers as the father of a poor little family, by every tie that can disarm cruelty and vengeance; and yet, coolly, deliberately, and tranquilly, he was shot through the heart, while manacled to a tree in the wilderness. The murderers were condemned by the laws of the land. A petition was got up for pardons, and hundreds and thousands signed it of the principal citizens of the union. Not only men but women signed it with alacrity, while the wife and orphans of the immolated victim, were forgotten and left to weep over the untimely fall of their only protector who was earning bread for their support, when his blood was sought by those fiends in the form and attire of men. We have no right to look for firmness on the part of a Chief Magistrate, and of his prompt rejection of petitions for pardons, while such reprehensible practices are continually indulged by men whose cool and reflecting moments would dictate a different course of conduct. It is painful to see wives and families deprived of their bread, by the commitment of a felon to the Penitentiary; it is afflicting to see an aged father mourning over the incarceration of an undutiful and profligate son; but what then? Shall the prison doors be cast open, and convicts be let forth to commit depredations anew, and our criminal laws rendered a mere mockery? Many of the applications sent to the Governor of the state of New-York, contain the most absurd allegations, and the most wilful misrepresentations; and the late annual Report

from the Auburn State Prison alleges, that "the business of procuring pardons has become the steady and profitable employment of many individuals who attempt the grossest impositions upon the Governor." When the obtaining of pardons becomes a profession and a settled pursuit, and those who engage in the vocation are favored with the names of those members of society to whom we look to give a tone to public sentiment, the prospect of reforming criminals is in truth dark and hopeless. We call upon men in power and authority—we call upon the friends to the peace and order of society—we call upon the friends of sound laws, and upon the friends to the rigorous and undeviating execution of sound laws, to raise the loud voice of reproof against the practice of embarrassing the Chief Magistrates of our states, with petitions for pardons. And we do also call upon the members of the Bar to refrain from acting in their legal capacity to procure the liberation of felons who have been justly condemned for their transgressions.

The committee also hope that those who are entrusted with the pardoning power will feel the importance of exercising it but seldom, and never but in extreme cases. If those in the community who should strengthen the arm of justice, and render the laws sacred and certain, will send up their petitions without reason or consideration; if women and children are presented as instruments to obtain the relaxation of Penal statutes; it is to be hoped, that there will be a firmness and decision in the breast of the Chief Magistrates to enforce the uniform and rigorous operation of the laws, as the only sure means of protecting the rights of individuals, and guarding the peace and safety of the great body of the people, in their aggregate capacity. But we are told, and told truly, that there is not room in many of the Penitentiaries, to contain all the convicts, and that pardons are granted of necessity. This we

know has been the case with our own State Prison, both under the administration of the late and the present Governor. But whose fault is this? Not the fault of the Chief Magistrate. It is the duty of every legislature to see that due means are afforded to enforce the laws. If more room is wanted for convicts, more must be provided. Let our Chief Magistrates, when necessary, call the attention of the legislature to this point, and then let them stand by, for justice to take her course. This would produce a better remedy, than the incessant granting of pardons. To conclude on this subject, the committee are cheered by the firm conviction, that a feeling is daily and rapidly growing up in the different states of the union, that will ere long, render the frequent interposition of pardons, an object of public reprehension and popular reproach. This sentiment is more and more visible in the prints and papers that traverse the nation. Certainty in the execution of penal laws will be demanded on principles of self-preservation.

The judicious selection of persons to have the controul, government and administration of our Penitentiary System, is an object of the first importance, as we look to its improvement and perfection. In the enjoyment of this requisition, we mean to include agents, keepers, directors, governors, inspectors or managers, and all other officers of whatever name, who may be appointed to exercise discretionary power in and over State Prisons. Those who are included in this enumeration, may be properly divided into two classes—those who administer the internal police of penitentiaries, and those who have charge of their general superintendence. The person or persons who have the immediate and direct management of convicts in a State Prison, have a trust confided to them of a most delicate and difficult nature. They are called upon to deal with

whose dispositions are different, and whose passions exhibit all the shades of turpitude and desperation. This is more particularly so, in the present state of our Penitentiaries, where a large number of convicts are placed together; where bye-laws and regulations must be made to govern their intercourse, and where a kind of special cognizance is had over the actions of each individual. Was each criminal kept in a solitary cell, by day and by night, fewer difficulties would be apparent; but, under the present condition of things, if we look to the amendment of convicts, or even if we pretend to keep them from becoming more depraved and dangerous, much depends on the character and qualifications of the person who hold immediate government over them. We conceive that he should be a man of mild and uniform disposition, of benevolent feelings, possessing courage, firmness and decision of character; experience in the walks of life, a knowledge of human nature, and a capacity to discern the leading passions of individuals, and all their weak points, seem requisite qualities. Individuals of this description can always be found, if adequate inducements are held forth to engage them; and when once obtained, they would cherish a deep and lively interest in the success of their efforts in the path of duty. Men who seek the office of agent or keeper, in our State Prisons, as a station of profit, should not be heard in their application. Party views and prejudices should not produce the selection of one and the removal of another; and when a sound choice has once been made, a change should be viewed as a calamity. If the human character ever can be reformed by the use of reason, the inculcation of moral thoughts and moral principles, and the application of wholesome mental discipline; if the reprobate can ever be called back to the ways of honesty or reclaimed from his vices, the Penitentiaries of this

country open a wide and fertile field to the zeal & patience of the philanthropist. Much can be done. Human nature, in its very worst state, can be wrought upon with success. The history of Mrs. Frey's exertions in New-Gate, affords a most gratifying comment on these remarks. She has entered the prison walls like a ministering angel of truth, peace and mercy, and guilt, in the most awful and repulsive form, has relinquished a dominion over its victims.

As to the selection of inspectors, superintendants, directors or governors, it greatly involves the prosperity of the system, and we can never look for its success unless care and judgment are exercised on this point. We must rise above the sphere of party passions and favouritism, and look abroad in the community, with a steady and dispassionate eye, for men who will watch over our Penitentiary policy as an important national experiment, involving a great portion of national happiness, and as one reaching the most intricate relations of society; for men, too, who will preside over it with a capacity that can discern defects, and apply the ready hand of correction. Confident we are, that the state governments or state executives can find men of public spirit, and of competent qualifications, to discharge this trust with fidelity. When once selected, permanency in the tenure of their appointment is absolutely essential to the faithful exercise of their functions. Time and observation are necessary to obtain a sufficient knowledge to enable men to act with due discretion and effect in the management of a State Prison; and when obtained, all the benefits to result from it are destroyed by ejection from office. Many of the State Prison codes and by-laws, at this time, want amendment, and it requires talent, patriotism, ardour and industry, to make the required corrections. With men of prudence and capacity in business,

we should unite others of a higher order, in point of ability, if we would constitute boards of inspection suitable to the ends which we have in view. We have said so much on this head, in another place, that further remark seems unnecessary.

When a convict is sentenced to hard labour, the spirit and letter of the law should be well observed. He should be put to work, and kept to work, in the true sense and meaning of the words *hard labour*. It is not contended that tasks should be cruel and tyrannical; but any relaxation in the requisition of the law, any favour shown to one individual, that is not evinced to another, and in fact, any thing like favour in any case is hostile to the System of punishment whose perfection is now sought. If one convict is to be permitted to sweep the rooms of the prison, another to clean the furniture and utensils, another to keep the yard in proper order, as a substitute for hard labour, undue and improper partiality is shown, and an authority and discretion are exercised, that the laws never intended. The certainty of punishment is destroyed, and pernicious contrasts are exhibited. Idleness should be guarded against, with the utmost scrutiny, unless solitude without labour, is the sentence of the criminal. To permit convicts to pass through any portion of their term in the State Prison in indolence, when it was intended by legislatures and courts of justice, as well as expected by the prisoners themselves, that constant and rigid industry should be their daily lot, is tolerating an abuse of a very mischievous kind. The performance of hard labour, is intended, by our penal statutes, as a part of the punishment of the convict. His exemption from this, in any degree, impairs the effect of the punishment. It is said, that in some of the State Prisons, the labour of criminals brings no returns; that there is no market for the manufactures which come from their hands.

No facts of this nature are before the Committee; and if there were any, we should say, that it would be far better, even to realise nothing more than the mere price of the stock worked up, than to permit idleness to reign within our State Prison walls, when hard labour is enjoined. We believe that the products of labour, performed in our Penitentiaries, can always be sold for something; and it is far more politic to dispense with strict calculations as to profit, than to permit relaxation in the punishment of public offenders. Agents, keepers, and all officers, who have the control and management of convicts, should, in the view of the Committee, be wholly prevented from showing any other favours or discrimination than the State Prison codes and bye-laws permit.

A disregard for personal cleanliness leads to the relaxation of moral principles, and renders the profligate more profligate, and the base more base. No public prison can be a place of reform, if a disregard to neatness is tolerated. The benevolent Howard, often had occasion, while visiting the dungeons of Europe, to raise his remonstrance on this subject. The Committee recommend, that the utmost care be taken, to render our Penitentiaries clean and wholesome, in every particular. The convicts should be compelled to keep their persons entirely free from every neglect, and every species of uncleanness. A habit of neatness would soon become pleasant and grateful to the feelings of the criminal; and if he had been once found among those collections of the wicked, where a disregard to appearance & decorum was apparent, he would reflect on the pollution of such associations, with disgust.

We again repeat the remark, that revenue must be a secondary consideration with those who administer the penitentiary system, if its designs are ever to be accomplished. We put convicts

in the State Prisons to be punished and reclaimed, not to earn money for the people. Punishment and its effects are never to be lost sight of. If the first object is the great productiveness of the labor of convicts, let it be so understood. We must then change our whole system to meet this end: and instead of confining prisoners within the walls of a State Prison during the day, it might be more profitable to put chains and weights on their feet, and let out their services in various ways. If the prevention of crimes is the design, let this also be substantively and primarily considered in all cases, and every thing renounced that militates against it. The committee, therefore, enjoin what common sense, and the most ordinary prudence dictates; let the first great question be, how can the Penitentiary System be rendered the most effective in diminishing crimes, and in reforming convicts? The moment this inquiry is forgotten, sound policy is contravened, and we give up the system to ruin and disappointment. It cannot be otherwise. Better that all the criminals in the United States should never earn a farthing, than to bear the present results of our defective and pernicious treatment. If it becomes necessary to keep each transgressor in perpetual solitude, it must be done. We must go through with the object of our criminal codes, or renounce them altogether, and begin again with the enactment of penal laws. Half-way laws, partial punishment, and legislative weakness and vacillation, will result in nothing but disaster, discouragement, and vice.

Here the committee terminate the second division of their report—the suggestion of remedies to meet existing evils in the Penitentiary System, and pass to the third general head: the substitute to which the different states in the Union must resort, provided this system is abandoned.

Let it be admitted that the Penitentiary System in this country, is beyond the reach of those radical improvements that would render it adequate to its original ends. Let us admit that the nation should rise up at once, and resolve on its immediate destruction. Let us repeal our present criminal codes, in the different states, and discard their mild

features. To what must we resort? We shall have crimes, and we must have punishments. Transportation, corporeal punishment, and death have been suggested as a substitute for our present punishments. They have found a vindication in some of the public prints of the day, more especially that of transportation, and men of influence in the community, and those well versed in the laws of their country, often mention the latter as the inevitable resort of no distant day.

Let us examine the expediency of resorting to transportation, corporeal punishment, and death, to prevent crimes. And as to the former, its impracticability is the first objection that refutes every argument in its favor. To what place will the United States send their felons? Where are our colonial—where our foreign establishments? Wherever our government extends and wherever it has force and authority, there the rights and immunities of American citizens may be enjoyed. We know of no inferior appendages, within the circle which it embraces. How then are we to dispose of convicts, if transportation is deemed expedient? We must either obtain some distant settlement, perhaps in the bosom of the Pacific ocean, or we must take some spot within our national dominions. As to procuring a foreign settlement, but two methods offer, by which the object could be effected; we must resort to purchase or to conquest. The constitution knows of no such policy as the appropriation of money, by the congress of the United States, to purchase a territory, that is not to be governed by that constitution—that is not to be a part of the American confederacy. The purchase of a foreign station is out of the question. Shall we then proceed by conquest? Shall we send our navy to take possession of an Island in the western seas? Foreign conquests, for any purpose, are hostile to the principles of our national policy. If one can be authorized, so can another, and we may go on till we have a chain of remote settlements. By what laws would they be governed? Not by the American constitution; not by the laws that extend their empire from the Floridas to the borders of the Canadas. A local government must be organized, and princi-

ples, foreign to our constitution, admitted. The expense of acquiring such a territory, and the expense of retaining it; independent of the disbursements for transporting criminals, are entitled to some consideration, if all other objections could be removed. But when we take into view the great expenditures that would continually be demanded, to send out convicts, and to keep them within the limits of their exile, we see new impediments. We must have military establishments, a guard, a foreign garrison, to watch over the rising destinies of our hopeful settlement. A few voyages round Cape Horn to carry forth the tenants of our prisons on their conviction, and a few annual appropriations to support a few troops to keep them in subordination, and to prevent their speedy return, would show an expenditure more than sufficient to erect separate cells, and support in solitude, every convict in the United States. The expenses for transporting convicts to Botany Bay, during the last twenty years, has cost Great Britain an enormous sum. And by whom would our criminals be transported? By the nation, or by the different states? If by the nation, then the nation is to execute state laws, over which the national government has no control—laws different in their provisions, in their enactments, in their severity, in tendency to increase or prevent crimes. As to the states, carrying away their own convicts, it would involve too many objections to permit its investigation. They would avoid the indicting, arraighing and convicting of felons, from the apprehension of heavy pecuniary burthens. Transient felons, fleeing from one state to another, would escape. Massachusetts or New York would not be anxious to punish the fugitives from Maryland or Georgia. We have mentioned a settlement some where in the Pacific ocean, because we can perceive no where else to which our views can be directed, with any thing like propriety.

It has been asserted by many, that a settlement at the mouth of Columbia river on the Pacific coast, might be established and sustained for our culprits. We take it for granted that no one would seriously think of transporting convicts to this remote region by land, across the western mountains, the extended spine of the

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Andes, several thousand miles. The disposal of one offender, in this manner would cost more than the support of ten, convicts in the State Prison, provided their periods of punishment were the same. If the journey by land is renounced, then the of Cape Horn, and all the unavoidable expenditures of transportation, and of maintaining a small military force before pointed out, occur to the mind. But another consideration arises on this subject. Suppose we sentence our criminals to a residence at the mouth of Columbia river, what would be the moral consequence? Is the banishment to be perpetual or temporary? If perpetual, then we confound all the gradations of a penal code to the magnitude and depravity of the offence. We must either adopt this kind of punishment in a very limited degree, or make great and small crimes of equal criminality. If the term of residence beyond the mountains, should be limited to five, ten or fifteen years, we have no idea that hardy and resolute offenders would change in character and morals, by the execution of the law upon them. We might expect to see them return to the society which they left, with new enterprise and new hardihood. What is the object of punishment at all? The prevention of crimes by the example, and reformation of the convict—by the spectacle which is presented to others. Would transportation to the mouth of Columbia river, have this effect? What hardened outlaw, would dread the novel and variegated scenes of a new country, where the eye is regaled with perpetual objects of wonder and delight? What felon, from the prisons of England, Ireland, France, Germany, Italy or Spain would find the bitterness of repentance in such a punishment? Who of our daring and active countrymen, would find their spirits broken down, and their moral depravity eradicated by such a destiny? They would consider it as an alluring excursion, and scarcely count the number of suns that should rise and set before their return. How far a collection of felons at this place, might hereafter annoy our frontier settlements, as they stretch along the receding shades of the wilderness, beyond the Mississippi; how far they might break away from the location assigned them by law, and min-

gle with hostile tribes of savages, and hereafter diffuse depredations along the chain of our frontier settlements, it is not necessary to inquire. The whole plan of transporting criminals from the different states, appears to the Committee, to be visionary and romantic. It has been noticed with some attention because it is always wise to suppress wild and fanciful theories, in their primeval state, before ardent and misguided votaries, adopt and defend them, in the place of systems that merit vindication. The United States can never resort to the transportation of convicts, to any distant spot, beyond the jurisdiction of municipal authorities, while the present form of government remains, and the people cherish their existing moral and civil institutions.

England transports convicts to Botany Bay. Her limited empire, her crowded population, her multitude of capital offences, her diversity of crime from her complex relations of society, may render this choice of evils necessary. Yet, if we may believe the declaration of English Statesmen on the floor of Parliament, the terror of this punishment is little felt. Lord Sidmouth averred in the House of Peers some few years ago, that "it was notorious that the dread of transportation, had almost subsided; and perhaps had been succeeded by a desire to emigrate to New South Wales." In a late debate in the British Parliament, Mr. Buxton declared, "that he should be guilty of insincerity, if he were to contend that transportation were any punishment at all." The expenditures of this kind of punishment have also been enormous. During twenty years past, it has not cost the British government much short of \$20,000,000 to send the criminals to port Jackson. This evidence should, at least warn the American people to be cautious in advocating a remedy for crimes that has been found ineffectual in a neighboring empire, after full trial.

We are sorry to find any advocates in this country, for those corporal punishments that seem alone congenial to the temper of despotic or barbarous ages. We cannot withhold our expression of regret, that one of the most rising & flourishing member of the confederacy—where free and enlightened principles

are cherished with tenacity, should have recently displayed, through some of her most distinguished legislators, a disposition to adopt penal laws, long since denounced in the United States, as disgraceful and inhuman, and as ineffectual to prevent crimes. Previous to that revolution which gave birth to our present system of government, corporal punishments were common. They even prevailed to a great extent, after the colonial laws ceased to exist. Cropping the ears, branding the forehead, burning the hand, the public infliction of stripes, and scourging, and exposure in the pillory were frequent. They were rejected for milder modes of punishment, as jurisprudence attracted the attention of our legislatures. Confinement to hard labour in our Penitentiaries was substituted; and now, before the virtues and efficacy of this substitute have been ascertained, by a full and fair test, there is a doctrine in the land, that it is politic to return to the penal statutes, that were recently repealed, as savage and obnoxious. And why take this retrograde step? Can it be proved, to the satisfaction of the American public, that while corporal punishments were in existence, crimes were less frequent than they are now? Even could this question be answered in the affirmative, it would not be satisfactory, since one species of crime false is peculiar to the present period of our history, from the extensive creation of banking institutions, since the Penal laws spoken of were abolished. The counterfeiting of bank notes was not known, because no banks existed. But were larcenies less frequent? Were burglaries, arson, and murder, less frequent? We contend that they were not. But what is the just and proper inquiry to be put here? It is simply this: Would corporal punishments go farther to prevent crimes, than solitary confinement to hard labour in our Penitentiaries? For this is the punishment which we hope yet to see universally adopted. On this point the Committee have no doubt; and they believe, that should this desired improvement take place, and be amply tried, not only corporal punishment, but all other substitutions for the Penitentiary System, would be relinquished, through universal conviction. Several objections occur to cropping the

ears, slitting the nose, branding the forehead, public whipping, and similar modes of treating felons. First, no facts prove that such punishments are more effectual in preventing offences, than our present Penitentiary System, defective as it is. In the second place, they render men desperate, insensible to shame, and dead to any appeals, either legal or moral. What has any person to look or hope for, in this world, when his features are so deformed as to attract the scorn of the public; or what has the culprit to anticipate, who has received the stripes of a constable, amid crowds of spectators, who will retail and communicate his disgrace to the second and third generation? Thirdly, they not only render offenders desperate, but they release them immediately, and enable them to exhibit this desperation in the perpetration of new crimes. There is at least one advantage in our Penitentiaries; while villains are shut up, society are relieved from their depredations and outrages. Not so, if the space of fifteen minutes finishes their punishment. Fourthly, the frequent infliction of cruel punishments inures the public mind to barbarities, and destroys the advantages intended to be reaped from the terror of example. People can become habituated to spectacles of horror, and feel no pangs at beholding them. We can scarcely conceive of a more shocking sight than the flocking of boys to a whipping post, to enjoy, in revelry and mirth, the tortures of fellow beings. All solemnity, all the benefits of example, are lost, when offenders are constantly doomed to suffer in ignominy, as a mark for the gazing rabble to shout at. Nor is it conceived that the American people would tolerate the idea of disfiguring the persons of our citizens, with hacking, branding & scourging. But we are told that all arguments drawn from the cruelty of this kind of punishment should be abandoned, since solitary confinement is still more cruel. This is a specious doctrine—not a sound one. Between physical and moral suffering, there is a wide difference. The first denotes the propensities and passions of a savage state of man. In Morocco, small offences or misdemeanors, are punished by the bastinado, or beating the backs and legs with leather thongs, something like the cat-o'-ninetails formerly used at

the whipping posts in this country; and larcenery, by cutting off a leg or hand, or other bodily disfiguration. There is also a method of tossing up criminals, so that they may fall on the head and fracture its bones. Montesquieu remarks, when speaking of the Japanese, that cruel and horrid punishments harden the public mind, and tend to render penal laws ineffectual. Of all laws, we may say that those of Japan are the most severe, and yet the most impotent. The administration of laws, distinguished for their severity, has no tendency to render persons more honest or more servicable to the public, who have incurred its vengeance. It rather tends to create hardihood, the absence of shame, and the loss of self-regard. Solitary confinement may be called a cruel punishment, although it is not entitled to that appellation, however severe its operation may be. But admit its cruelty—to what does it lead? To reflection; to repentance, to the amendment of the criminal. His features and his limbs remain as God has made them. If he forsakes the ways and devices of the wicked, no external deformity remains, a perpetual mark of public ignominy, when crime is expiated and guilt done away. We trust and hope, that the day is far distant, when the free states of the union will retrace their steps to a system of laws, that would be at war with civilization, humanity, the principles of our institutions, and hostile to the lessons inculcated by the experience of other times.

Singular as it may appear to the enlightened and reflecting of other nations, there is a disposition sometimes indicated in this country, to adopt capital punishments to a wide extent. Because the Penitentiary System has been grossly perverted, and its principles lost sight of, by those who have been entrusted with its administration; because an experiment has failed before it has been adequately tried; in order to preserve our property and protect our persons, there are occasional bursts of popular feelings and discontent, that denote symptoms of cruelty and error, inconsistent with the political institutions of the na-

tion, and the reason on which they rest. Without any inquiry why the Penitentiary System has disappointed the hopes of the states; without any reflection on the practicability or impracticability of improving and perfecting it; capital punishments are urged as the only means of preventing crimes. Suppose we adopt this remedy and execute criminals for all the felonies, that are now punished by hard labour in the different State Prisons; what would be the effect? The Committee consider that two consequences would arise: first, the laws would not be executed; secondly, if they were rigidly enforced, executions would lose their terror by becoming common. It was a deep rooted abhorrence, to to cruel punishment, that first diminished the number of capital felonies in the United States; and it is to be hoped, that the influence of early education and the diffusion and inculcation of Christianity for the last few years, have not had an influence to render us less humane or less careful in establishing sanguinary laws. Let us amend our Criminal Codes in the different states to-morrow, and render counterfeiting bank notes, burglary, breaches of the public trust, grand larceny, conspiracies, and and swindling, or obtaining goods, chattles and money, under false pretences, capital felonies;—what would be the effect? More than two-thirds of these crimes would probably go unpunished, and therefore be committed with fresh impunity; for how many would not shrink from being informers, if convinced that by their testimony alone, the life of a human being, perhaps the parent of a large number of children, was to be taken? What would be the reasoning of a large portion of American citizens in such a case? Would they not say to themselves, it is aggravating to have our rights infringed upon, but better to endure this than be the instruments of sending a fellow mortal out of the world? Such feelings might be derided, as the offspring of weakness and folly;

but they do exist, and will exist, until our sentiments, as a nation, undergo a very radical change. Grand Juries would be backward in presenting indictments, when death was to be the probable consequences. They would find it more consonant to their feelings to dismiss complaints than to find a bill upon them. There would also be a difficulty in procuring juries to convict criminals under cruel laws. Twelve men would have many agonising sensations in condemning a culprit to death, for stealing property to the amount of fifty or a hundred dollars, or passing a counterfeit bank note of five or ten dollars. Every opportunity would be embraced to find the offender not guilty. Any doubt in the testimony, affording an excuse would produce an acquittal. Laws to be effectual must be certain; and therefore it will be no answer to say, that if these minor depredations did escape, more enormous ones would not. If men would seldom inform, and juries shrink from convicting; on the smallest doubt, and the most slender excuse or subterfuge, what would be the consequence? Crimes would rapidly increase, because a vast proportion of them would go unpunished. Again: if the execution of criminals became an ordinary spectacle, the dread and terror of this species of punishment would be banished, and its restraints be destroyed. Mankind can be rendered familiar with horrid spectacles by habit. The savage of our western wilderness beholds the agonies of the prisoner at the stake, with composure. The wife of the Hindoo ascends the funeral pile of her husband with a firm step. The monsters of the Inquisition feel no pangs at the tortures of their victims; and an execution in Japan, creates no more sensation than the morning clouds that obscure the sun. The Romans beheld the blood of their gladiators, without the movement of a nerve or a muscle; and in Great Britain, at this day, the execution of half a score of

felons, calls forth no expression of horror from the populace. In time, we should betray the same indifference. The frequent repetition of similar scenes would habituate our eyes to the suspension of men, women and children, from the gallows. There is a habit of thought, as well as a habit of action; and when, by the continual occurrence in the mind, any kind of punishment becomes naturalized to our tone of feeling—abhorrence is overcome.

But what do we do, in advocating capital punishments, in some ten or fifteen kinds of felony in the United States? We do violence to the moral feelings of the people of this country, which involuntarily repel all sanguinary laws. We go further. We disregard the solemn lesson of an experience that is drawn from the history of successive ages: for, we would ask, in what period of national history have capital punishments suppressed the crimes they were designed to prevent? Are we not compelled to believe that they have rather promoted, than diminished, the evils they were intended to destroy? Take the Roman empire under the Cæsars, during the mild reigns of her most humane and virtuous emperors, who relaxed the rigor of her penal laws; crimes were less frequent than under those of her most furious despots, who promulgated bloody edicts in every direction. Alfred came to the English throne amid confusion, war, and licentiousness. He abolished all capital punishments excepting three kinds of felony, treason, murder, and arson. Instead of increasing, public offences rapidly diminished, and the security of person and property, during the peaceful and beneficent reign of this virtuous prince, has been a distinguished era in the annals of the British empire. The reign of Henry 7th, Henry 8th and of queen Elizabeth, of England, are remarkable for the number of felonies which were rendered capital, and yet they are noted for the number

of criminal offences perpetrated during their existence. Lord Bacon considered the penal laws the most odious feature of the government of Henry 7th. During the reign of Henry 8th, there were 72,000 executions for robberies; and while Elizabeth was on the throne, they were peculiarly numerous. The contrast that modern history has exhibited, between the operation of the penal laws in Tuscany and the papal dominions, is striking and pertinent. When the late Grand Duke of Tuscany ascended the throne his dominions were overrun by robbers and assassins. Robberies and murders were common, and the wheel, the rack and the gallows were seen in all quarters. On reading the celebrated work of the Marquis Beccaria, he entirely abolished capital-punishments. An army of executioners, with their instruments of death, were dismissed, and milder laws rendered Tuscany one of the best ordered states in Europe, and no where were life and property more safe. Punishments were proportioned to the offence, and executed with strictness and certainty. In the Papal dominions, separated from Tuscany by a small dyke, the severity of punishment was kept up, and crimes continued. Robbery and homicide still continued to be committed. He who robbed was executed. He who robbed and murdered, suffered no more. The consequence was, that he who was robbed was also murdered. Sir William Blackstone, after speaking against the too frequent infliction of capital punishment, asks if they have been found more salutary than those of a milder character. "Was the vast territory of Russia," says he "worse regulated under the late empress Elizabeth, than under her more sanguinary predecessors? Is it now, under Catharine II. less civilized, less social, less secure? And yet we are assured, that neither of those illustrious Princesses have, throughout their whole administration, inflicted the penalty of death. And the latter has, up-

on full persuasion of its being useless, nay even pernicious, given orders for abolishing it entirely, throughout her extensive dominions."

Were atrocious crimes more frequent in France under the reign of Napoleon, than under the government of any one of the Burbons, for half a century before him? We know they were not. And yet he greatly moderated the penal code, and assumed the sceptre of power, after the revolution had poured its overwhelming torrents of licentiousness, over the kingdom.

But why thus range the globe for illustrations? There is a nation in the fulness of life and glory, to whom we can refer. England is before our eyes. The present state of her penal laws is worth the volumes of centuries. We know of no nation in existence, which has so many capital felonies as Great Britain, and we know of none where capital punishments are so numerous, and penal laws more ineffectual to compass their ends. If the infliction of death is so well calculated to deter men from committing offences, why do they wholly fail to effect this result in England? Criminals are constantly executed for forgery, and still forgery goes on. Felons are continually executed for stealing, and still thefts increase. They are committed under the very gibbets where thieves are hung. What is this but experience putting down theory? A man is executed for picking a pocket, and during the execution, three-score more pockets are picked, and the suffering of one criminal leads to the liability of twenty or an hundred more. The British parliament have enacted that the passing of a one pound bank note shall be punished with death. What has been the effect of this statute in suppressing that crime? In 1814, there were 10,343 convictions under this act; in 1815 14,000; in 1816, 21,000 and upwards; and in 1817, 28,000 and upwards. Is this preventing felony by the taking away of life? Mr. Buxton, in his late speech in the house of commons, states

expressly, that in the face of more than 200 capital punishments, crimes that fall under them continue to multiply. The criminal code of France is less severe than that of England, and yet, with more than double the population of Great Britain, the number of her criminals is less. But there is another great evil in the accumulation of capital offences in England—one that we have mentioned in our arguments—the laws are not executed. The injured will not complain, witnesses will not appear, grand juries will not find indictments, petit juries will not convict, and if they do convict, the sentence is often rendered inoperative. The same evil has existed for generations. "So dreadful a list," said sir William Blackstone, when speaking of the penal statutes inflicting death in England, "instead of diminishing, increases the number of offenders. The injured, through compassion, will forbear to prosecute; juries, through compassion will sometimes forget their oaths, and either acquit the guilty or mitigate the offence; and judges through compassion, will respite one half the convicts, and recommend them to the royal mercy." The investigation of the house of commons, the witnesses examined at the bar of that body, the speeches of eminent men in both houses of Parliament, go far in settling this grand fact. Sir Samuel Romilly, in a speech before the British Legislature on the 25th March 1813, stated, that, "he would take the present opportunity of mentioning the state of the law, as derived from the returns on the table, with respect to the act making it capital to steal within a dwelling house to the amount of forty shillings. Within eight years down to 1816, no less than 1097 persons had been tried for this offence. Of these, 293 only had been capitally convicted, and not one had been executed. In 1816, 131 more persons had been tried, of whom 49 had been capitally convicted, and one, (whose case was accompanied with great ag-

gravations) executed. So that of 1228 individuals tried, 342 only had been capitally convicted, (the juries either acquitting the 886, or finding them guilty of stealing to a less amount,) and only one person executed." In 1732, there was a statute passed in England, rendering frauds, in cases of bankruptcy, capital crimes. Since that period it is ascertained that there have been 40,000 bankruptcies; and yet Basil Montagu, esq. stated, in a late examination before a committee of the house of commons, that there had been but nine or ten prosecutions during 87 years, and but three executions, although the frauds within the statute were common and proverbial.

Hence we see that when sanguinary laws are executed, they fail to prevent crimes, and when they are peculiarly severe, they remain a dead letter; and thus directly promote, instead of suppressing crimes—entailing on the community a complication of immoralities. The dangerous tendency of frequent capital punishments and their total failure to control and restrain the vicious propensities of mankind, have long been perceived & enforced, by men who have shone among the first luminaries that ever diffused light and truth through the world. More than three hundred years ago, that learned and excellent man, Sir Thomas More, assailed the enormity of the penal code of Great Britain. His writings on criminal law, have not yet lost their impression on the feelings of civilized man. About two hundred years ago, Sir Edward Coke, that venerable giant of jurisprudence, on whom we yet cast back our eyes with reverence and admiration, entered his solemn caveat against the taking of human life by laws like those of his own country. "What a lamentable case it is," said he, "that so many christian men and women should be strangled on that cursed tree of a gallows: insomuch as if in a large field a man might see to-

gether all the christians that but in one year, throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed with pity and compassion." He then proceeds to advise reform. Sir Francis Bacon, the lord chancellor of England, whose writings awoke the long slumbers of human reason remarked to queen Elizabeth: "So it is most certain that your people are so ensnared in a multitude of penal laws, that the execution of them cannot be borne." Sir Walter Raleigh advocated the same principles, as early as 1611; Chillingworth in 1640, and Doctor Johnson in 1751. In 1750, the increase of certain crimes that were capital felonies, roused the attention of the British parliament. A committee was appointed in the house of commons, consisting of the earl of Catham, Mr. Pelham, then prime minister; Mr. Grenville, Mr. Littleton and Charles Townsend, successively secretaries of state; Sir C. Loyd, then a distinguished member of the English Bar; and Sir Dudley Ryder, then attorney general, and afterwards the Chief Justice of England. These great ornaments of the British empire recommended the exchange of death for other adequate punishments, and introduced a bill that was passed in the house of commons and defeated in the house of peers. Twenty years afterwards, in 1770, another committee, consisting of Charles James Fox, Sir William Merideth, Sergeant Glynn and Sir C. Banbury, was appointed, who also reported a great reduction of capital punishments, and introduced a bill that passed the house of commons and was rejected in the house of lords. "Neither was this bill opposed," said Mr. M'Intosh, in one of his eloquent speeches in parliament, "by any of the great ornaments of the house of Lords of that day, Lord Cambden or Lord Mansfield; it was thrown out on the opposition of others, whom I will not name, and whose names will be little known to posterity." Since that day, such men as Mr. Pitt, lord Erskine, the marquis of Lansdown, Mr. Canning, lord Grey, Sir Samuel Romilly, Mr. Roscoe, lord Lauderdale, Sir James M'Intosh, Mr. Whitebread, Mr. Wilberforce, Mr. Buxton, Mr. Colquhoun, and others, whose rank and talents are well known to the American public, have made strenuous efforts to procure the diminution of capital punishments in England. But why, we shall be asked, has England still retained her penal code, against the genius and influence of such a host? And we will ask, why has she tolerated pauperism by the most careless policy, since the days of William and Mary, when she was first loudly warned against this evil? Why did she tolerate the slave trade for years after Fox, Pitt, Wilberforce, united their exertions for its abolition? Why does she oppress the Catholics of Ireland, and spread the gloom of bondage over the land of fame and genius? Why tolerate the errors of her representative system? Why do nations ever oppose the voice of reason? Why, in fact, have the empires and kingdoms of the earth slept in chains for ages? Why have rational systems of government and rational laws, been shut out for centuries, from the pale of civilized communities? Or, to come nearer home, why is there a disposition in this country to pass over reason and christianity, to the adoption of punishments that would disgrace the pages of American history? But the day of reform is fast approaching in England, and the awful effects of capital punishment are spreading a cloud over the face of society. Crimes and outrages increase, and the destruction of human life but augments their atrocity. The last report in the house of commons, and the debates in the same body, carry the strongest conviction that the criminal code of England cannot last. Mr. Colquhoun, who was the greatest police magistrate that ever England has seen, and who

has written more largely on the subject of police than any other man, uttered these unqualified words, to the committee that represented the British nation, four years ago: "It has occurred to me, that except in cases of high treason, murder, sodomy, arson, and other offences, accompanied with violence to the person, the punishment of death may be dispensed with, under circumstances advantageous to criminal justice." If any thing further is wanting to illustrate the fact, that the criminal laws of England are at variance with the moral feelings of the British community, we could successfully allude to the late publication of Mr. Roscoe. In this invaluable treatise, talents, philosophy and research, are blended, in a triumphant vindication of the principles of humanity. No man can answer it. The illustrious author condemns the extensive adoption of capital punishments, and recommends the Penitentiary System to the English nation. He thus directs their attention to the United States: "Fortunately, however, whilst the civilized world has been groaning under the effects of a barbarous and sanguinary Code of laws, mitigated at times by the milder spirit of philosophy, another system has arisen, which from obscure beginnings, has gradually attracted more general notice, till at length it has been adopted in practice on an extensive scale and affords a favourable prospect of ultimate success."

And with these lights shining in our eyes—with this deep voice of experience sounding in our ears, shall we cast off our moral feelings, and all the principles of our early education? Shall we renounce the spirit of our constitutions, as well as the counsels of sound policy and humanity, and fill our statute books with bloody law? Are we ready to behold the instruments of death and torture in our peaceful villages, where education and moral maxims have gained dominion? Are we prepared to see the

gibbet erected along the borders of our highways, and by the side of the pleasant fields of the husbandman? Are we willing to have the populace of our towns and cities constantly pouring forth, as to a theatre of sport & revelry, to behold the last sufferings of capital offenders? On this point, we shall say no more. Against the extension of capital punishments, the Committee feel it their duty to remonstrate, in every proper shape and manner—at all times and all appropriate occasions. And they regret that the sentiment, once expressed by Sir Henry Spelman, is forcibly brought to mind at this enlightened period of the world. He once remarked, when speaking of penal laws, that in proportion as governments were rendered better, and civilization had advanced, human life seemed to be rendered of less worth and consequence in the eyes of legislators and lawgivers.

The anxiety which prevails in the United States, on the subject of the Penitentiary System, is deeply cherished by the civilized nations of the other continent. The third Report of the Society for the improvement of prison discipline, and for the reformation of Juvenile offenders, embracing more than two hundred pages, combines a mass of interesting matter. This association is sustained by the first men in England, whether we consider rank, talents, or wealth; and its funds are ample for the grandest purposes. It is carrying reformation through the dominions of the British crown, and collecting information from all quarters of Europe, and diffusing it back again, through countless channels.

Many of the evils displayed in our Penitentiaries, have been found in the prisons of England. The want of classification, the want of constant labour, the evils of continual intercourse, the increase of depravity, and the pernicious tendency of granting pardons and respites, are among the prominent defects pointed out.